IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 1344 OF 1998

IN

ARBITRATION PETITION NO. 344 OF 1998

IN

AWARD NO. 33 OF 1998

M/s T.V. & Radio Publicity Services)
5, Rajshree, Dattatray Road,)
Cross Lane, Santacruz (West),)
Mumbai-400 054.) .. Appellant

V/s

1. Union of India)
through the Director of Sales,)
Central Sales Unit,)
All India Radio, Mumbai-400 020.)

2. D.S. Nagarcenkar)
Sole Arbitrator,)
Residing at 1/34, Shantivan (MHADA))
New Link Road Extn.,)
Andheri (West),)
Mumbai-400 053.) .. Respondents

Mr.R.R. Sharma for the Appellant.

Mr.Amjad Sayyed with Mr.Naresh Dutta P. Sharma for Respondent No.1.

CORAM : R.M.S. KHANDEPARKAR &
D.G. KARNIK, JJ.

DATE : 15TH MARCH 2007

ORAL JUDGMENT: (Per R.M.S. Khandeparkar, J.)

1. This appeal arises from order dated 16th November 1998 passed in Arbitration Petition No.344 of

1998 in relation to Award No.33 of 1998. The impugned order is sought to be challenged on three grounds. Firstly, that the learned Arbitrator could not have proceeded with the arbitration proceedings as the person, who was appointed as Arbitrator under the earlier order, had not ceased to be the Arbitrator on the day Shri D.S. Nagarcenkar was appointed as Arbitrator. It is the contention on behalf of the Appellant that Shri Nagarcenkar was appointed by order dated 24th February 1997 whereas the earlier Arbitrator had resigned only on 10th April 2007. Consequently, the entire proceedings are to be held as bad in law. Secondly, Shri Nagarcenkar was appointed as Arbitrator by the Deputy Director General of All India Radio when in fact in terms of the agreement between the parties, it was the Director General who was required to appoint the Arbitrator and, therefore, considering the provisions of section 22 of the Arbitration Act, 1940, the proceedings are to be held as ab initio bad in law. Thirdly, it is sought to be contended that since the proceedings before the Arbitrator proceeded exparte, proper opportunity should be given to the Appellant and on that count, the Award should be set aside.

2. As regards the first ground of challenge, indisputably Shri Nagarcenkar entered the arbitration on

27th June 1997. It was much after the date on which the order confirming the acceptance of the resignation of earlier Arbitrator was passed. Undisputedly the earlier Arbitrator had tendered his resignation on 19th August 1995. In the circumstances, merely because the letter appointing Shri Nagarcenkar as Arbitrator in place of earlier Arbitrator was issued on 24th February 1997, that itself cannot make the proceedings bad in law.

3. A resignation implies relinquishment of one's own right to the office he is holding. The act of resignation connotes voluntarily giving up of the job or the office which the person was holding till the time of his resignation. A statutory provision or a contract governing the terms of service conditions may provide for the procedure for tendering resignation and for giving effect to the resignation tendered by the person in employment or occupying an office. However, in a case where there is no such provision of law or terms of the agreement between the concerned parties governing such procedure and when the office occupied by the person is by choice and at the discretion of the incumbent of such office, the resignation by such person would be effective from the time it is tendered and communicated to the concerned party or the authority. It is only in a case where there is specific provision

either in the statute or in the agreement between the parties that the resignation to be effective needs to be accepted by the concerned authority, that the date for giving effect to the resignation would stand extended to the date of acceptance of resignation. In other words, when the act of resignation is unilateral in character, it would take effect from the date of communication thereof without any further decision on such resignation by the concerned authority (vide: Moti Ram v. Param Dev and Anr. reported in AIR 1993 SC 1662 = (1993) 2 SCC 725). In Moti Ram's case (supra), it was clearly ruled by the Apex Court that:-

> "If an act of relinquishment is of unilateral character, it comes into effect when such act indicating the intention to relinquish the office is communicated to the competent authority. The authority to whom the act of relinquishment is communicated is not required to take any action and the relinquishment takes effect from the date of such communication where the resignation is intended to operate in praesenti."

Obviously, it is only in a case where the act of relinquishment is of bilateral character, the date of

acceptance of resignation would assume importance. That is not the case in the matter in hand. Hence, there is no substance in the first ground of challenge.

4. As regards the second ground of challenge, it is not in dispute that in terms of the agreement, the appointment of the Arbitrator was required to be done by the Director General. The records in the matter indisputably disclose on solemn affirmation by the Deputy Director General of All India Radio that the appointment of Respondent No.2 was made by the Director General of All India Radio on 17th February 1997 and the Director General authorized the Deputy Director General (C) to issue order in that behalf. Accordingly the order dated 24th February, 1997 was signed and issued by the Dy. Director General (C) stating therein that the Respondent No.2 was appointed as the Sole Arbitrator. Further, that Rule 13(3) of the Delegation of Financial Powers Rules empowered the Head of the Respondent to delegate all or any of the powers conferred upon the Head of the Department. However, in the case in hand, the appointment of Arbitrator was made by the Director General himself. Indisputably, the statements as above on oath by the Deputy Director General of All India Radio have never been denied or disputed by the Appellant. Obviously, therefore, the records clearly

disclose that appointment of the Arbitrator was by the Director General himself and not by the Deputy Director General. The Deputy Director General had merely given effect to the order of appointment of the Arbitrator which was issued by the Director General in terms of the agreement between the parties. Being so, we do not find any failure on the part of the concerned authority to comply with its obligation in terms of section 22 of the Arbitration Act, 1940.

5. As regards the contention about the proceedings being exparte and, therefore, opportunity should be given to the Appellant. The contention is totally devoid of substance. In fact the said submission is contrary to the records. The relevant portion of the Award regarding the appearance and participation of the parties in the proceedings reads thus:

> "The Respondent failed to present himself during the hearing and present his case before the Arbitrator although he had received the said Notice (dt. 9-6-97) for which the acknowledgment by way of Registered A.D. card is on the records. Thereafter, as many as five hearings were held on 23-7-97, 6-8-97, 21-8-97, 25-9-97 and 3-10-97 as notified, at which the

representatives of the Claimant and their Counsel were present and submitted their papers/documents in support of their claim. But there was none to represent the Respondent. The minutes of all these hearings have been furnished to both the parties from time to time. It is pointed out that the Notices and the minutes of the above mentioned five hearings held between 23-7-97 and 3-10-97 were sent to the Respondent by Registered Post A.D. but the same have come back from the Postal Department with the remarks that the addresses (Respondent) have not claimed them despite the intimations given to him by the Postal Department."

6. The above notings in the Award clearly disclose that the Appellant was not only served with the notice about the hearing of the matter, but even after the hearing was concluded, all the records regarding the hearings were posted to the Appellant by Registered Post A.D. However, the Appellant did not accept the same in spite of intimation by the Postal Department. In the circumstances, the Appellant cannot claim to have no knowledge of the proceedings. In those circumstances, the Arbitrator was justified in proceeding exparte against the Appellant, when a proper opportunity was

afforded to him to defend the case. It is the Appellant who has to blame himself for the same and cannot seek undue advantage of his own failure to appear before the Arbitrator and defend his case.

7. For the reasons stated above and there being no other ground canvassed against the impugned order, the appeal fails and hereby dismissed with no order as to costs.

(R.M.S. KHANDEPARKAR, J.)

(D.G. KARNIK, J.